THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 2955 OF 2002

% 06-03-2006

Between:

A.V.Education Society, Gaganmahal, Hyderabad, rep. by its Secretary.

……Petitioner

And

Municipal Corporation of Hyderabad, Hyderabad, rep. by its Commissioner & another.

…..Respondents

For the Petitioner : SRI S.NIRANJAN REDDY

For the Respondents : SRI RAMA RAO GHANTA

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> Head Note:

? CITATIONS:

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ORDER : (Per Hon'ble Sri Bilal Nazki, J)

Heard learned counsel for the parties.

The writ petition has been filed, challenging the demand notices with respect to Property Tax under The Hyderabad Municipal Corporations Act, 1955 (hereinafter referred to as 'the Act').

The only ground agitated before us is that the educational institutions being run by the petitioner-society, are exempt from tax in terms of G.O.Ms.No.468 (MA), dated 31.7.1993. The learned counsel for respondents submits that this G.O. would not apply to the petitioner in view of the clear mandate of Section 202 of the Act. The relevant provision relating to exemptions and pertinent for the purpose of present controversy is Section 202 (bb), which is being reproduced herein below:

> "**202 (bb)** : Educational institutions upto 10th class, the buildings, of which are donated by charitable institutions or philanthropists, or which are depending on the grant-in-aid by the Government for the maintenance and such other educational institutions which are not running purely on commercial lines, but serving the cause of primary education which the Government may consider from time to time."

Admittedly, the petitioner-society is not running any institutions, which are imparting education upto 10th class. They are running the colleges and on plain reading of this provision, it is clear that they are not exempt from tax. However, they rely on G.O.Ms.No.468. This G.O. was passed by the Government on 31.7.1993. It may be pertinent to note that Section 202 (1) lays down that general tax shall be levied in respect of all buildings and lands in the city except the buildings mentioned in sub-clauses (a), (b), (bb), (c) and (d). Sub-clause (b) originally read as, *"Buildings and lands or portions thereof solely occupied and used for public worship or for a charitable or educational purpose"*. The words *"or educational"* in Section 202 (1) (b) were omitted by an amendment Act being Act 20 of 1989 with effect from 01.11.1990. The amendment of Section 202 (1)(b) rules out any doubt as to whether the educational institutions are exempt or not. The Government purposely omitted the words *"or educational"* from Section 202 (1)(b).

However, after this amendment was made, it appears that certain representations were made to the Government and Government gave certain directions, directing the Commissioners of Municipalities and Municipal Corporations to take necessary action to implement the orders of the Government. It also ordered that pending amendments in The Andhra Pradesh Municipalities Act, 1965 and The Hyderabad Municipal Corporations Act, 1955, the said G.O. was being passed.

We fail to understand how the provisions of an Act can be defeated by a Government Order. This G.O.Ms.No.468, dated 31.7.1993 lays down, *"Following concessions in the restructuring of Property tax in the Municipal Councils and Corporations are made"*, and one of the concessions given was, *"Exemption from payment of property tax to recognised Educational Institutions, charitable hospitals and dispensaries"*. This was clearly against the provisions of Section 202 of the Act, and Government could have not passed any order violating the provisions of law and this Court is not expected to enforce a Government Order, which is contrary to the Statute.

The learned counsel for petitioner however, relies on Section 679-E of the Act, which according to him, is the power with the Government to issue the impugned Government Order. Section 679-E lays down;

> "The Government may from time to time give such directions not inconsistent with the provisions of the Act or the rules made thereunder to the Corporations as it may consider necessary for carrying out the purpose of this Act."

The Government, under this provision, is permitted to issue directions for carrying out the purpose of the Act and it is specifically barred from giving any directions, which are inconsistent with the provisions of the Act. The impugned Government Order is manifestly and clearly inconsistent with the provisions of the Act. Therefore, the writ petition is misconceived and it is accordingly dismissed.

(BILAL NAZKI, J)

6th March 2006

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(G.CHANDRAIAH, J)

N.B:

L.R. copies to be marked.

(B/o)

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